

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest  
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

February 6, 1985

Gregory D. Thatch  
Law Offices  
1700 L Street  
Sacramento, CA 95814

Re: Your Request for Advice  
Our File No. A-84-318

Dear Mr. Thatch:

Thank you for your request for advice on behalf of the Sacramento Employment and Training Agency (SETA) concerning the application of Government Code Section 84308<sup>1/</sup> to SETA Governing Board members.

In your letter, you gave the following background information regarding SETA:

SETA was formed in 1978 as a Joint Powers Agency comprised of the City of Sacramento and the County of Sacramento. Its governing board is comprised of two members of the Sacramento Board of Supervisors, two members of the Sacramento City Council, and one public member selected by both the Board of Supervisors and City Council. At the time of its formation, its purpose was solely to jointly administer the Comprehensive Employment and Training Act (CETA) funds on a consortium basis for the City and the County. With the demise of CETA, SETA became the grant administrator and grant recipient of funds from the state pursuant to the Job Training Partnership Act (JTPA). In addition, SETA has also become the Community Service Agency for Sacramento County and as such is the recipient of all Community Service Block

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<sup>1/</sup> All statutory references are to the Government Code unless otherwise noted.

Grant (CSBG) funds allocated by the State Office of Economic Opportunity. SETA is also the recipient of Indo-Chinese Refugee Targeted Assistance Program funds allocated by the State Department of Social Services. Finally, SETA is the Head Start Grantee for Sacramento County receiving these funds directly from the Federal Department of Health and Human Services, Administration for Children, Youth and Families. It should also be mentioned that in the future it is possible that SETA may be the recipient of other forms of human service monies for administration within the City and County of Sacramento.

Accordingly, as you can see, SETA is a principal recipient and administrator of human service funds in the City of Sacramento and County of Sacramento.

While SETA does provide some direct client services and employs staff for this purpose, it serves primarily as the administrator of the funds. Thus, in order to provide for the majority of direct client services, SETA enters into subgrant or contractual relationships with a variety of entities. Most typically, SETA contracts with community based organizations (nonprofit corporations which operate human service programs). In addition, however, SETA does allocate funding in some programs to sole proprietorships, partnerships and private for profit corporations. The vast majority of the human service programs which are operated through the funding allocated to SETA under the various federal and state grants are operated by these separate entities.

Each of the entities which operates these programs is selected through a competitive procurement process. This competitive procurement process is either mandated by federal law and regulations or state law and regulations. The most typical process to accomplish this competitive procurement is the use of Request for Proposal (RFP). SETA issues a Request for Proposal and interested entities when respond by the submission of a proposal to operate a certain type of program. A rather elaborate review process is then undertaken. Cost alone is not the determining factor in selection. Prior performance, staff capabilities, nature of program, and geographical area to be served are among the many factors considered. This review process includes not only staff review and recommendations but also the review of certain boards

and commissions. While some of these boards and commissions issue advisory recommendations only, others, such as the Private Industry Council under the Job Training Partnership Act, must concur in the funding decisions. Ultimately all funding decisions are made by or concurred in by the SETA Governing Board.

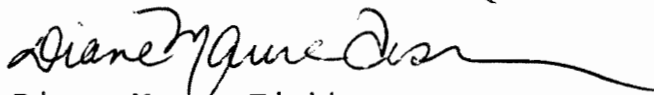
Section 84308 applies to proceedings involving a "license, permit or other entitlement for use" which are pending before the officials of a state or local government agency. This term is now defined in Section 84308 as amended by AB 2992 (Stats. 1984, Ch. 1681) to include "all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises." (Emphasis added.) Section 84308(a) (5).

In this situation, the crucial issue is whether the contracts or grants entered into by SETA fall into the exception to the definition for competitively bid contracts. As you know, the Commission has not promulgated a regulation on this issue nor on several other issues which arise under the amended version of Section 84308. We hope that the Commission will consider most of these issues during the next year. In the meantime, it is our intent to give advice which seems most consistent with the intent and spirit of the statute and which is accompanied by the caveat that a Commission regulation or opinion issued in the near future may change the advice. Accordingly, it is our advice that the exception for competitively bid contracts should be narrowly construed to apply only to contracts where the bidders submit fixed amounts in their bids and the agency is required to select the lowest qualified bidder. The intent of this exception is to remove only those contracts where the agency has little, if any, discretion in choosing the contractor. It is our understanding that this narrow exception will primarily apply to contracts for goods or supplies and some subcontracts for services. It appears from your description of SETA's competitive procurement process that these contracts or grants will not fall within the exception. Therefore, these proceedings are covered by Section 84308, and the prohibitions and the disclosure/disqualification requirements apply. However, since most of SETA's grants and contracts are with nonprofit corporations or government agencies, the dictates of Section 84308 will not be relevant in most instances.

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Please feel free to contact me if I can be of further assistance. I will place your name on the list of interested persons for any future amendments to the regulations implementing Section 84308.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane Mauva Fishburn", followed by a long horizontal flourish.

Diane Mauva Fishburn  
Staff Counsel  
Legal Division

DMF:plh

Dec 17 1 29 PM '84

December 12, 1984

Barbara Milman, General Counsel  
Fair Political Practices Commission  
1100 K Street, 2nd Floor  
Sacramento, CA 95814

RE: Sacramento Employment and Training Agency

Dear Ms. Milman:

Please be advised that this firm serves as Legal Counsel to the Sacramento Employment and Training Agency (SETA). I am writing at this time pursuant to a conversation I had with Diane Fishburn of your staff with respect to AB2992/Government Code §84308. After a discussion with Ms. Fishburn, she suggested that I formally write you requesting your advice regarding the applicability of Government Code §84308 to my client and specifically its Governing Board.

Obviously, background information regarding SETA is in order. SETA was formed in 1978 as a Joint Powers Agency comprised of the City of Sacramento and the County of Sacramento. Its governing board is comprised of two members of the Sacramento Board of Supervisors, two members of the Sacramento City Council, and one public member selected by both the Board of Supervisors and City Council. At the time of its formation, its purpose was solely to jointly administer the Comprehensive Employment and Training Act (CETA) funds on a consortium basis for the City and the County. With the demise of CETA, SETA became the grant administrator and grant recipient of funds from the state pursuant to the Job Training Partnership Act (JTPA). In addition, SETA has also become the Community Service Agency for Sacramento County and as such is the recipient of all Community Service Block Grant (CSBG) funds allocated by the State Office of Economic Opportunity. SETA is also the recipient of Indo-Chinese Refugee Targeted Assistance Program funds allocated by the State Department of Social Services. Finally, SETA is the Head Start Grantee for Sacramento County receiving these funds directly from the Federal Department of Health and Human Services, Administration for Children, Youth and Families. It should also be mentioned that in the future it is possible that SETA may be the recipient of other forms of human service monies for administration within the City and County of Sacramento.

Barbara Milman, General Counsel  
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Each of the entities which operates these programs is selected through a competitive procurement process. This competitive procurement process is either mandated by federal law and regulations or state law and regulations. The most typical process to accomplish this competitive procurement is the use of Request for Proposal (RFP). SETA issues a Request for Proposal and interested entities then respond by the submission of a proposal to operate a certain type of program. A rather elaborate review process is then undertaken. Cost alone is not the determining factor in selection. Prior performance, staff capabilities, nature of program, and geographical area to be served are among the many factors considered. This review process includes not only staff review and recommendations but also the review of certain boards and commissions. While some of these boards and commissions issue advisory recommendations only, others, such as the Private Industry Council under the Job Training Partnership Act, must concur in the funding decisions. Ultimately all funding decisions are made by or concurred in by the SETA Governing Board.

In reviewing Government Code §84308, it is my impression that it is not applicable to SETA and its Governing Board in that the the contract or subgrant determinations that are made are not in the nature of a license, permit or other entitlement for use. This is especially true considering that a competitive procurement process, as mandated by the federal and/or state government, is utilized for all such determinations.

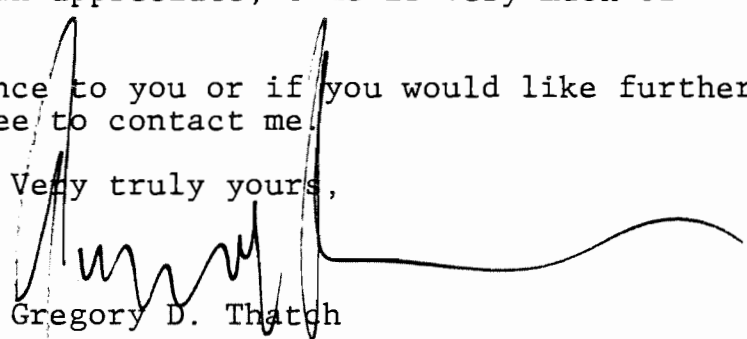
It is my understanding that the Fair Political Practices Commission has not yet promulgated regulations with respect to the statute and that Commission is in the process of developing those regulations. While, as stated, it is my view that the statute is inapplicable to SETA, I would nonetheless appreciate your advice and guidance at this time so that I may properly advise my client. It is my understanding from my conversation with Ms. Fishburn that the

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Commission is prepared to issue such advice during this interim period. As I am sure you can appreciate, time is very much of the essence.

If I can be of assistance to you or if you would like further information, please feel free to contact me.

Very truly yours,



Gregory D. Thatch

GDT:mlm

cc: Illa Collin, Supervisor  
Toby Johnson, Supervisor  
Grantland Johnson, Councilman  
Joe Serna, Councilman  
R.M. Carmody  
Walter Slipe, City Manager  
Brian H. Richter, County Executive  
David R. Martinez, Director - SETA  
Melvin W. Price, Supervising Deputy County Counsel  
James P. Jackson, City Attorney